The court in the principal case states that for the acquisition of a right by prescription it is necessary to show the servient owner's acquiescence. The great majority of the cases also use this word as describing one of the necessary ingredients of prescription. *Rooker* v. *Perkins*, 14 Wis. 79. But by the weight of authority no greater acquiescence is necessary than in the analogous cases where title to land is acquired by adverse possession. In short, the servient owner must be deemed to acquiesce if he remains inert when he knows of the plaintiff's claim and could prevent the acquisition of the right. *Daniel* v. *North*, 11 East, 372; *Webb* v. *Bird*, 13 C. B. N. S. 841; *Treadwell* v. *Inslee*, 120 N. Y. 458. It is difficult to see how acquiescence could be regarded as containing an affirmative element without becoming practically equivalent to permission. Though permission would be most consistent and most in harmony with the theory of an actual lost grant, yet it is well established that use of an easement by the permission of the servient owner will never ripen into a legal right. *Pierce* v. *Selleck*, 18 Conn. 321; *Esling* v. *Williams*, 10 Pa. St. 126.

There is some authority to support the principal case on the ground that verbal objection constitutes a sufficient interruption of the easement to prevent the gaining of a legal right. *Powell* v. *Bagg*, 74 Mass. 441. These cases go on the theory that a slight interruption should be sufficient to rebut the presumption of a grant. But this is opposed by the weight of authority which requires an actual interruption by the servient owner either through the commission of some suable act or through an action carried to a successful issue. *Kimball* v. *Ladd*, 42 Vt. 747; *Lehigh, etc., Co.* v. *McFarlan*, 43 N. J. Law 605. These cases seem correct, since if verbal objections amounted to interruptions the acquisition of any prescriptive rights would be well-nigh impossible.

Many courts have abandoned the doctrine of lost grant, and hold that rights by prescription are acquired strictly on the analogy to the acquisition of title under the statute of limitations. *Mueller* v. *Fruen*, 36 Minn. 273; *Okeson* v. *Patterson*, 29 Pa. St. 22. Such a rule has the merit not only of attaining fairer results, but also of being based upon fact rather than upon fiction.

RIGHTS OF SURETY IN SECURITIES HELD BY CO-SURETY. — While the right to contribution as between co-sureties is now recognized at law, its equitable origin is apparent in that it is still regulated not by strict rules of law, but by considerations of practical justice and of business convenience. *Deering* v. *Winchelsea*, 2 B. & P. 270. A departure from the principles usually adopted to secure those ends occurs in a late North Carolina decision. One of several sureties on a sheriff's bond had, before becoming surety, obtained security from the sheriff. Although it did not appear that the co-sureties knew of the transaction, no actual fraud toward them was shown. It was sought to bring the security into hotchpot, for the common benefit of all the sureties, but the court held that the one to whom it had been given might use it for his own separate indemnity. *McDowell County Com'rs* v. *Nichols et al.*, 42 S. E. Rep. 938.

Where security has been given by the principal debtor to one of several sureties after the suretyship relation has been formed, but before payment of the principal debt, the authority is overwhelming that the security enures to the common benefit, even though the result be to deprive the surety, who obtained the security, of the fruits of his diligence. *Berridge* v. *Berridge*, 44

Ch. D. 168. See BRANDT, SURETYSHIP, § 268. The reasons underlying this view seem to be those of practical fairness. The contrary doctrine would facilitate secret and fraudulent dealings between the principal and a favored surety, and would therefore tend to prevent the strict maintenance of the fiduciary relation in which the law places co-sureties *inter se.* See *Agnew* v. *Bell*, 4 Watts (Pa.) 31. It would also enable a creditor hostile to the unsecured sureties to sue them alone, leaving them to bear the burden of the obligation without having the benefit of the security. See *Lansdale's Adm'rs* v. *Cox*, 7 T. B. Mon. (Ky.) 401, 403. The same considerations seem applicable to that class of cases to which the principal case belongs, namely, that in which the security is given contemporaneously with the creation of the suretyship. Accordingly the weight of authority holds, in opposition to the principal case, that here, too, the security must be held for the benefit of all the sureties. *Agnew* v. *Bell*, *supra*; *Steel* v. *Dixon*, 17 Ch. D. 825. The North Carolina court, however, distinguishes the two classes of cases on the ground that a security given at the time of contracting the suretyship forms a part of the consideration of the contract of which the surety should not be deprived. It is submitted, however, that the security should nevertheless be brought into hotchpot, both for reasons suggested above and because the application of the same rule to both classes leaves the law in a more uniform state.

Cases of a third class arise when partial security or indemnity is given by the principal to one of several co-sureties after payment of the principal debt by one or more of such sureties. Here the courts hold that the surety receiving such indemnity may hold it free from the claims of his co-sureties, and that, consequently, his right to contribution from them is in no way affected by the transaction. *Gould* v. *Fuller*, 18 Me. 364; *cf. Harrison* v. *Phillips*, 46 Mo. 520; *Messer* v. *Swan*, 4 N. H. 481. In support of this view it may be argued that, since the creditor has been paid, he can no longer discriminate unfairly among the sureties; that the payment by the sureties has for the first time definitely fixed the amount of their claims as against each other, and that therefore the courts, in order to wind up the suretyship relation as soon as possible, insist upon a final settlement as of the time of the accrual of these definite claims. This course has the further advantage of securing to the diligent surety the full benefit of the indemnity which he has obtained. It would seem, however, that to some extent at least, these arguments may be answered. It is true that the creditor is no longer able to inflict the loss at his caprice on the unsecured sureties, but this power has merely been transferred to an equally capricious principal who, in many cases, is insolvent. The opportunities for fraud between the principal and a favored surety remain, and the rule destroys the uniformity otherwise running through the cases. It is probably the advantage of an immediate final settlement which has led the courts to adopt this rule. If accepted, however, it should be with the qualification that the partially indemnified surety be not allowed to recover from his co-sureties a sum which, added to the indemnity already paid him by the principal, exceeds the amount which he originally paid to the creditor.

TAXATION OF PROPERTY LYING OUTSIDE THE TAXING DISTRICT. — An interesting point regarding the limits of a state's right to delegate powers of taxation is involved in the facts of a case lately before the Supreme Court